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SCOTT MICHAEL LEWIS

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,

Plaintiff,

v.

One Cessna Airplane, Model Number  
TU-206, bearing Tail Number N6214V  
and Serial Number U206-1189, and

\$259,717 United States Currency,

Defendants,

SCOTT MICHAEL LEWIS,

Claimant.

Civil Case No.: 2:14-cv-00151-ABJ

**EXHIBIT 3 AND EXHIBIT 4 TO RENEWED MOTION TO SUPPRESS**

# **Exhibit 3**

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF WYOMING

3 -----  
4 UNITED STATES OF AMERICA,

Case No. 14-CV-00151-J

5 Plaintiff,

Cheyenne, Wyoming

December 18, 2015

6 vs.

2:28 p.m.

7 ONE CESSNA AIRPLANE, MODEL  
8 NUMBER TU-206, BEARING TAIL  
9 NUMBER N6214V AND SERIAL NUMBER  
10 U206-1189, and

\$259,717 UNITED STATES CURRENCY,

11 Defendants,

**CERTIFIED COPY**

12 SCOTT MICHAEL LEWIS,

13 Claimant.  
14 -----

15 TRANSCRIPT OF SCHEDULING CONFERENCE PROCEEDINGS

16 BEFORE THE HONORABLE ALAN B. JOHNSON  
17 UNITED STATES DISTRICT JUDGE

18 APPEARANCES:

19 For the Plaintiff:

MR. ERIC J. HEIMANN

MR. C. LEVI MARTIN

Assistant U.S. Attorneys

UNITED STATES ATTORNEY'S OFFICE

P.O. Box 668

Cheyenne, WY 82003-0668

22 For the Defendants  
23 and Claimant:

MR. JOE D. BUSTOS

Attorney at Law

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25 OFFICIAL COURT REPORTER - (303) 296-3056

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

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1 APPEARANCES: (Cont.)

2 For the Defendants  
and Claimant:

MR. DAVID M. MICHAEL  
Attorney at Law  
LAW OFFICES OF DAVID MICHAEL  
One Sansome Street, Suite 3500  
San Francisco, CA 94104  
(Appearing via teleconference)

6 Court Reporter:

MS. JULIE H. THOMAS, RMR, CRR  
910 19th Street, Rm. A256  
Denver, CO 80294  
(303)296-3056 CA CSR No. 9162

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Julie H. Thomas, RMR, CRR

(303) 296-3056

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1 (Proceedings commenced 2:28 p.m.,  
2 December 18, 2015.)

3 MR. MICHAEL: This is David Michael calling in.

4 THE COURT: Good, we have a nice connection with you,  
5 Mr. Michael. This is Judge Johnson speaking. Present also  
6 with me --

7 MR. MICHAEL: Judge Johnson, nice to --

8 THE COURT: Thank you. Present with me is Joe  
9 Bustos, who just came in, your local counsel. And Eric  
10 Heimann and Levi Martin from the United States Attorney's  
11 Office are both present also. We are all leaning over a  
12 conference table in chambers.

13 The matter for hearing today is United States of  
14 America, plaintiff, against One Cessna Airplane and Scott  
15 Michael Lewis, who makes claim to the airplane as well as the  
16 sum of \$259,717 in United States currency, all of this in  
17 Docket 14-CV-00151. This all arises out of a -- out of  
18 searches pursuant to warrants issued by the Circuit Court in  
19 Cody, Wyoming, of a Cessna aircraft as described and the hotel  
20 room or motel room, Holiday Inn, Room 110, located at  
21 1701 Sheridan Avenue in Cody, Wyoming, which occurred on or  
22 about February 28th, 2014 in the morning hours.

23 We had a pretrial conference in this matter, and a  
24 period of discovery was set for the parties. And can I get a  
25 report from you, Mr. Heimann, concerning the discovery that

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1 you have engaged in?

2 MR. HEIMANN: Your Honor, the Government has served  
3 interrogatories under Supplemental Rule G(6). We received  
4 some inadequate answers. We filed a motion to compel, which  
5 was granted by Judge Rankin. And if I'm correct, Claimant has  
6 been ordered to respond in full by the 30th of this month. We  
7 have really been waiting on the resolution or an answer to  
8 those interrogatories before pursuing additional discovery.  
9 We have not been served any discovery by the Claimant.

10 THE COURT: Very well. And Mr. Michael, any  
11 discovery that you have sought?

12 MR. MICHAEL: Eric is correct in that regard, Your  
13 Honor. We do have a order by Judge Rankin that he issued on  
14 December the 9th, I think it was document 49, compelling some  
15 further responses to the special interrogatories. We -- and I  
16 have, actually, a question for the Judge. We obviously have a  
17 concern, a serious concern, about Judge Rankin's order, and I  
18 suppose in one -- one way of proceeding, we will respond to  
19 Judge Rankin's order, and it's due, as Mr. Heimann said, on  
20 December the 30th, but we are going to have -- we are  
21 going -- there are going to be some issues created as a result  
22 of what we may respond to because we have a strong  
23 disagreement with Judge Rankin's analysis of the prevailing  
24 law regarding responses to special interrogatories. That's  
25 one way we can do it, and I'm sure that after we respond that

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1     the U.S. Attorney's Office will probably seek some further  
2     remedies, whether it's a motion to strike or a motion for some  
3     sanction.

4                      The other alternative, which I would probably want  
5     the Court's advice on, is I would like to challenge Judge  
6     Rankin's order if there's some orderly process of having this  
7     Court review that particular order. And I looked in the  
8     rules, and I can't find any particular rule that says how we  
9     would do that in this particular court, whether it's a motion  
10    for reconsideration of the order or a -- some objection to it  
11    in some way, rather than going through this whole process of  
12    giving answers that the Government will deem very incomplete  
13    and then they will try to seek a further remedy on it. So I  
14    wanted to raise that issue before this Court in a real frank  
15    and open manner.

16                    THE COURT: All right. Mr. Heimann, anything you  
17    have to suggest?

18                    MR. MARTIN: Your Honor, Levi Martin here. That was  
19    my motion, so probably best if I speak to it.

20                    THE COURT: All right.

21                    MR. MARTIN: As the Court knows, there is a provision  
22    under the local rules that allows for the District Court to  
23    review a Magistrate Court's decision. I don't have that rule  
24    number off the top of my head, but it's there. I know it's  
25    there. You've got to do it within 14 days, so by my

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1 calculation that's about three days from now. In any event --  
2 maybe five days. In any event, it appears as if, what I'm  
3 hearing counsel say, that he's not going to give us what  
4 Magistrate Rankin said he's supposed to give us, so it  
5 probably would be best if he went ahead and did that and we  
6 get this figured out, because we're pretty comfortable with  
7 what the law says, and we're pretty comfortable with what  
8 Magistrate Rankin's understanding of the law is. And so if  
9 that's what they want to do, that would be better than  
10 prolonging it. Because I can say this much: My review of the  
11 initial pretrial deadlines was that somewhere in the middle of  
12 March discovery is going to close, and this issue really  
13 should be addressed before we move on to other discovery. So  
14 I'd hate for this to, you know, somehow mess with other  
15 deadlines. So I'm not sure if --

16 MR. MICHAEL: I agree with that, Your Honor. We will  
17 do that. We will file a motion for this Court to reconsider  
18 Judge Rankin's December 9th order compelling further  
19 responses. It -- in the whole scheme of things in terms of  
20 what's going on in all the circuits, it's an important issue.  
21 It's been addressed in a number of circuits very recently, and  
22 apparently the battle is still ongoing. So with the Court's  
23 permission, we'd like to timely file a motion for the Court's  
24 reconsideration of Judge Rankin's order, and we will get that  
25 done within that 14 days from December the 9th.



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1 THE COURT: Just to assist you, our Local Rule 74.1  
2 deals with reconsideration of magistrate judge's action.

3 MR. MICHAEL: Is that a 14-day window, Your Honor?  
4 Was Mr. Levi correct? Or Mr. Martin.

5 THE COURT: Yes, it is. It is 14 days after service  
6 of the magistrate judge's order.

7 MR. MICHAEL: Okay, after service. Thank you, Your  
8 Honor. So we will do that as far as that's concerned.

9 But I don't, um -- I, I would like that not to  
10 interfere with the other issue that's pending before this  
11 Court in terms of our motion to suppress and the Court setting  
12 a new hearing date on that motion due to, I think, the  
13 Government's representation that Detective Parduba was  
14 unavailable for any earlier hearing.

15 THE COURT: Correct.

16 MR. HEIMANN: That's right, Your Honor. I just -- I  
17 don't want to put it in a written motion, but Detective  
18 Parduba, as I understand it, is having his hip replaced next  
19 week, and his conflict for the 17th was a presurgical  
20 appointment which was necessary for him to continue to go  
21 forward with the surgery. What he told me is that his doctor  
22 has said it's at least two weeks minimum, maybe longer, up to  
23 a month to six weeks. So if Your Honor wants to hear from the  
24 affiant of the search warrant in an evidentiary hearing, we  
25 would ask that that hearing be scheduled sometime in early to

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1 mid-February.

2 THE COURT: Do we need to hear the issue of whether  
3 or not the Court wishes to hear that kind of evidence today?

4 MR. HEIMANN: Well, Your Honor, I'd like to know.  
5 One of the things we wrote in our response to the motion, and  
6 reiterated in our motion to continue, is that we don't think  
7 there's a disputed issue of fact here. We don't hear the  
8 Claimant to suggest that the affidavits that he included as  
9 his exhibits were not, in fact, the affidavits that were  
10 submitted to the Circuit Court judge or that the warrants were  
11 not, in fact, the warrants that were issued by the magistrate.  
12 There's nothing in his motion to suggest --

13 THE COURT: Or that there was a Franks type of issue.

14 MR. HEIMANN: Yes, Your Honor. There's nothing to  
15 suggest that Detective Parduba -- that there's any falsehood  
16 in the affidavit, whether intentional or by reckless disregard  
17 for the truth. There's no suggestion that there's anything  
18 that needs to be looked at other than the four corners of the  
19 warrant. The only suggestion that's in the written motion is  
20 that the Claimant would like the opportunity to examine the  
21 dog handler, but he hasn't suggested any specific fact. He  
22 merely speculates that we might come up with some reason to  
23 doubt the dog's credibility, which in the context of a search  
24 warrant doesn't really matter. If the affiant, under Tenth  
25 Circuit precedent cited in our response, if the affiant

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1 truthfully says the dog was certified and the dog was, in  
2 fact, certified, that's enough for the magistrate to rely upon  
3 that alert when determining probable cause. So it's different  
4 from a nonwarrant search.

5 And so I'm not sure that there's any specific fact  
6 that needs to be resolved to resolve the motion as it stands.  
7 And, Your Honor, I don't want to bring the wrong witness, I  
8 don't want to bring a witness that's not necessary, and I  
9 don't want to begin a direct examination without knowing that  
10 there's a particular fact Your Honor wants to know about or  
11 that's disputed. And so I need some direction from you.  
12 Obviously if you want to hear a witness, the Tenth Circuit has  
13 said that's within your discretion, and we'll bring that  
14 witness, but I don't want to do that if it's not necessary and  
15 all we need is a hearing for argument.

16 MR. MICHAEL: Your Honor, can I address that, Your  
17 Honor?

18 THE COURT: Yeah, you may respond, Mr. Michael.

19 MR. MICHAEL: I don't have any objection to this  
20 hearing going out into February, if the Court does decide to  
21 conduct an evidentiary hearing. Probably we would want it  
22 after February the 24th, when I look at my own calendar. So I  
23 don't have any problems with that.

24 As far as what Mr. Heimann said about Detective  
25 Parduba, there's an argument that can be made that this Court

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1 doesn't necessarily need his testimony regarding the issues as  
2 to Detective Parduba in dealing with the motion to suppress  
3 and quash, but there definitely is a need for us to have the  
4 testimony of the dog handler in this case because that's a  
5 critical component in the Government's attempt to establish  
6 probable cause. And the Supreme Court just -- in *United*  
7 *States versus Jones*, just two years ago, two and a half years  
8 ago -- actually, they decided two dog cases; *U.S. versus Jones*  
9 is the one that's more relevant to our case -- clearly lays  
10 out that, and I think we have it in our brief before the  
11 Court, that this whole concept of a dog alert is very -- is  
12 something that's being subjected to a lot of serious  
13 examination these days, and the *Jones* decision clearly says  
14 that we, as claimants, or anybody who's challenging a dog  
15 alert must have an opportunity to challenge that dog's  
16 reliability, to challenge it in regards to not just its  
17 training and certification but in terms of its performance,  
18 because the concept of reliability is a broad concept. And  
19 we've been doing that in a number of cases. And there have  
20 been a lot of studies about dog alerts, there's a lot of  
21 studies that are just recently coming out about dog -- what  
22 constitutes proper training and certification, what  
23 constitutes how a dog handler does it, whether a dog does  
24 false alerts, a dog is cuing. All of those issues are very  
25 important issues, and *Jones* has opened the door to that, which

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1 we've been asking the court to do that for years.

2           And so what we would like to do is certainly have  
3 this dog handler testify at an evidentiary hearing on the  
4 motion, but we would like to set the hearing out, using the  
5 guidelines of *U.S. versus Jones*, submit discovery to the  
6 Government, a limited discovery just related to the  
7 suppression issue for the list of the witnesses there. And  
8 more specifically, as I was just discussing with Mr. Bustos  
9 this morning, we want to discover all of the dog reports  
10 regarding the dog's training, certification, and field  
11 records, which is the dog's performance. Those are the  
12 traditional things that you always get in discovery, at least  
13 on cases when there's a dog alert, and there's no reason for  
14 us not to get it in this case. And then in an evidentiary  
15 hearing we want to challenge that dog's performance, because  
16 the Government alleges that this dog alerted to this Cessna  
17 aircraft and that that dog alert was an essential element of  
18 the Government's probable cause in supporting the affidavit or  
19 the affidavit supporting the search warrant. And what's  
20 ironic about the whole case is that the dog alerts to an empty  
21 airplane. There's no drugs in the airplane. So that raises  
22 the -- should raise the question to any court about the  
23 reliability of this dog and whether it alerted and what it  
24 alerted to. I don't know if the Government has a video of  
25 this -- usually they're supposed to videotape these dog alerts

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1 if they have the ability to do so -- or what kind of evidence  
2 they have about how that particular dog alerts, how he's  
3 training, how he's supposed to alert, is he a passive or an  
4 aggressive dog, what has he done in the past, has this dog  
5 been trained to do what they call extinction training so the  
6 dog doesn't alert to currency, because the dogs traditionally  
7 learn how to alert to currency and they become currency  
8 alerting dogs, or how the dog alerts to residual orders, was  
9 there a residual odor, and that kind of stuff. It's just a  
10 complex equation.

11 So I feel that's a critical aspect of the motion to  
12 suppress, and we need discovery from the Government regarding  
13 all that stuff, as *Jones* mandates, and then we would want an  
14 evidentiary hearing at least on that.

15 And if the Court is going to have an evidentiary  
16 hearing and we are going to kick it over to February, I would  
17 think it might be wise or the Court may want to have Detective  
18 Parduba available for his own testimony because you never know  
19 which way these hearings are going to go. It may get to a  
20 point where, you know, this Court may want Parduba's  
21 testimony. And if he's completed his hip replacement surgery  
22 and he is available and we move this thing out way to the end  
23 of February, it might be helpful to the Court, if we're going  
24 to have an evidentiary hearing on any issue, to have Detective  
25 Parduba available.

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1                      THE COURT:    Thank you.    I was kind of surprised that  
2                      this is even in federal court.    Why wasn't this brought in  
3                      state court?

4                      MR. HEIMANN:    The forfeiture, Your Honor?

5                      THE COURT:    Yeah.

6                      MR. HEIMANN:    I think, Your Honor, the state  
7                      forfeiture law is limited to state drug crimes, and whether or  
8                      not there was a state drug crime I think is less clear than it  
9                      is that we have probable cause to believe and the Court's  
10                     already found the reasonable belief that we can prove that  
11                     this was drug money, whether it was sold in Wyoming or not,  
12                     most likely not, and that it was -- that the plane was a  
13                     conveyance for controlled substances.

14                     And, for what it's worth, Claimant is fortunate to be  
15                     in federal court because the procedural protections and the  
16                     rules here are significantly more understood and clear and  
17                     black letter than in state civil forfeitures.

18                     MR. MICHAEL:    May I respond to that, Your Honor?

19                     THE COURT:    Surely.

20                     MR. MICHAEL:    Okay.    I assume that was Mr. Martin  
21                     speaking.

22                     THE COURT:    No.

23                     MR. HEIMANN:    Mr. Heimann.

24                     THE COURT:    That was Eric Heimann.

25                     MR. MICHAEL:    Well -- oh, it was Eric.    Well, that's

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1 a very, very cautious response, Your Honor, and I think  
2 there's a bigger response. And the bigger response is that,  
3 A, there is this policy called equitable sharing that is  
4 promulgated by the United States Attorney's Office, the  
5 Department of Justice. And equitable sharing, if there is a  
6 state seizure of property and the state merely proceeds based  
7 on its own state laws, then the state law usually controls the  
8 disposition of the seized funds. Now, I'm not too sure about  
9 how Wyoming does it, but in, like, for example, California  
10 most of that seized money goes into the general fund, and it  
11 pays down the state debt, it pays for schools, it pays for  
12 roads, it pays for education, and a very small percentage goes  
13 to the seizing agency. Under federal law, though, if a state  
14 seizes some property and they give it over to the feds and the  
15 feds adopt it, the policy is called adoption, which happened  
16 here, then the policy of equitable sharing kicks in, and  
17 equitable sharing allows the federal government, if they  
18 obtain a forfeiture of that property, to return up to  
19 80 percent of that value of that property to the state seizing  
20 agency, not to the State of Wyoming, but to the state seizing  
21 agency, which is a law enforcement agency. And that law  
22 enforcement agency can use those funds for any purpose they  
23 want, and it doesn't have to go into the state fund, and it  
24 doesn't -- it completely sidesteps state law regarding the  
25 disposition of forfeited property.



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1           So that's the reason that the state agents use this,  
2 take these seizures, local state seizures, and hand it over to  
3 the feds, even though Eric is correct that the federal law is  
4 a little more structured than the state laws are regarding  
5 forfeitures. But the results of that is, of course, you can  
6 get easier forfeitures under federal law than you can under  
7 state law. So it's because of this equitable sharing.

8           Now, that -- there have been a lot of allegations  
9 that that's a corrupt practice, okay, because it allows these  
10 state agents to get around state law which controls the  
11 disposition of forfeited property, and in response to that the  
12 U.S. Attorney just in the last I think six months, if I'm not  
13 wrong, has issued a policy rule saying that the federal  
14 government will no longer adopt state seizures unless the  
15 federal government is a active actor in the investigation and  
16 seizure or at least it was done as a result of a joint task  
17 force in which the federal government was a part of the joint  
18 task force. Without those circumstances, the federal  
19 government no longer adopts these state seizures.

20           Now, this particular rule, and I really -- came into  
21 being after the federal government adopted this particular  
22 case, so we -- I don't think it's a retroactive rule, so we  
23 can't, like, take advantage of that, but certainly it should  
24 cast some shadow upon this case being in federal court. So I  
25 thought that was a rather pointed question you asked, and

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1 that's my explanation for why this now is in federal court.

2 THE COURT: Thank you, Mr. Michael. And I think  
3 you've well summarized what you put in your, your motion to  
4 suppress with regard to that issue.

5 All right. Anybody have anything further they wish  
6 to say about these matters?

7 MR. HEIMANN: Your Honor, when it comes to the dog  
8 handler, if the Claimant wants to pursue discovery on the dog  
9 handler's records, we'll accept service, and we'll evaluate  
10 those requests when they come in, and we'll provide the  
11 records we believe we are required to provide, but it's not in  
12 his motion, and I don't think it's appropriate to turn the  
13 suppression hearing into the deposition of the dog handler.  
14 There's not one thing in this motion that suggests a definite,  
15 specific, articulable, disputed fact. And if the Claimant  
16 wants to withdraw the motion, find such a fact, and refile it,  
17 then he would be entitled to an evidentiary hearing. At this  
18 point he's not. And I will bring whatever witnesses Your  
19 Honor wants, but I am afraid that if the dog handler comes to  
20 a suppression hearing, it will become his deposition.

21 MR. MICHAEL: Well, I don't know that -- of course,  
22 there's a parallel between a deposition and testimony at an  
23 evidentiary hearing. They're pretty much basically the same.  
24 I'm not too sure what that means. When a person takes the  
25 witness stand, you're going to ask them the same kind of

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1     questions that you would ask them in a deposition. So I don't  
2     think it's necessary for us to go through a deposition before  
3     we have an evidentiary hearing. There won't be any -- there  
4     won't be any mystery. A court -- what I would suggest is that  
5     we do discovery on that, the documentary evidence, which I  
6     don't think Mr. Heimann would contest that we have a right to  
7     all those records, and then we can, uh -- if -- maybe with the  
8     Court's permission we can file a reply brief rather than to  
9     refile the motion, because I think that your local rules here  
10    don't allow us to file a reply brief without the permission of  
11    the Court.

12                      And so maybe what we could do is the Judge can say do  
13    your discovery regarding all the dog stuff and the other  
14    ancillary stuff to the motion, and then after we get the  
15    discovery allow us to file a reply brief, and maybe that will  
16    address all the concerns that Mr. Heimann has about an  
17    evidentiary hearing. We certainly can include that in the  
18    reply brief, maybe beef up our request for an evidentiary  
19    hearing which was in our original motion in a reply brief.  
20    We've got plenty of time to do that. It's the middle of  
21    December, and we're probably going into late February if this  
22    Court allows an evidentiary hearing. That's what I would  
23    suggest, discovery, reply brief, and then the Court can then  
24    determine -- set a tentative evidentiary hearing, and the  
25    Court can make its own determination on it.

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1                      THE COURT: All right. Thank you, Counsel.

2                      It seems to me that this case is one that, whichever  
3 way the Court is going to go, is ripe for an appeal to the  
4 Tenth Circuit Court of Appeals and is one that's going to go  
5 there.

6                      I have carefully reviewed the Claimant's motion to  
7 suppress and to quash or to quash the search warrant, as well  
8 as the attached declaration of counsel, which was very well  
9 prepared and certainly illustrates that Mr. Michael is  
10 thoroughly conversant and familiar with all of the issues  
11 connected with forfeiture and certainly is intending to  
12 utilize every avenue that he -- is available to him to succeed  
13 in this case. However, I have to totally agree with the  
14 Government's counsel in this matter. At this point there  
15 appears to be nothing suggested in the submissions that we  
16 have received so far in behalf of the Claimant that would tend  
17 to impeach or raise issues concerning the use of the dog.

18                      Interestingly, the most recent case, which was  
19 authored by Stephanie Seymour I think in 2013, involving a dog  
20 sniff and a warrant situation bears amazing similarity to the  
21 case that's under consideration here. There were some  
22 differences in terms of the aircraft was noted by the federal  
23 authorities flying in to Liberal, Kansas, which appeared  
24 suspicious in that it flew from a location in New Mexico north  
25 to Liberal, but interestingly in that case part of what made

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1    it suspicious was an earlier flight of an airplane that wasn't  
2    even described. And here we have the exact same airplane in  
3    an earlier flight with suspicious circumstances and  
4    weather-related issues on both occasions. And it was weather  
5    there that was, interestingly, what brought it and anchored it  
6    to Liberal in Kansas. There was a dog sniff in that occasion,  
7    and that dog was proved to be ultimately 58 percent accurate,  
8    and that dog sniff was upheld in that case.

9                      In an earlier case involving dog sniff authored by  
10    David Ebell, a very respected senior circuit judge, the dog  
11    was I think 71 percent accurate, and that was found sufficient  
12    for -- in that situation.

13                     All of this is, it seems to me, to be a long way  
14    around the issue of in the absence of any discovery that's  
15    taken place that would in any way show me that that dog and  
16    its certification in the last month prior to the search in  
17    this matter by a certifying organization raises any fact issue  
18    presently that would compel me to order a hearing in this  
19    matter. And I don't see any reason to take evidence in the  
20    absence of something that would dictate, dictate that being  
21    done.

22                     Now, maybe discovery will reveal something if the  
23    parties go forward, but that's the reason I asked or inquired  
24    as we started this hearing what discovery had been conducted  
25    because that is a matter of, obviously, significant interest

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1     in this matter. There's nothing. And the magistrate judge,  
2     Bruce Waters in Cody, Wyoming, I'm really looking at what was  
3     before him. The affidavits are significant, I think, in that  
4     I think that they were prepared between roughly 4:00 in the  
5     afternoon and 6:00 a.m. the next morning and as comprehensive  
6     as they are. But that's not me taking a fine magnifying glass  
7     and looking at them in the eyes of an attorney either, which I  
8     will be glad to do when I get the briefs in this matter.

9                      And I want to make sure that Mr. Michael has  
10    preserved his objection to my ruling in this case. I think he  
11    has adequately done so, but if he feels he needs to say  
12    something else, I want to hear.

13                    MR. MICHAEL: Your Honor, it appears to me that you  
14    are saying that at this point you don't see anything that  
15    would cause this Court to allow for an evidentiary hearing,  
16    but will the Court allow us to do the discovery that we would  
17    like to do and file a reply brief so that the Court can  
18    further consider the discovery evidence in regards to this  
19    particular case? Because I --

20                    THE COURT: Are we -- has discovery been closed?

21                    MR. MARTIN: No.

22                    MR. MICHAEL: Excuse me, Your Honor?

23                    THE COURT: I don't think discovery has been closed.

24                    MR. MARTIN: May. There's plenty of time. Actually,  
25    I'm sorry, it's the middle of March.

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1                      THE COURT:    It's the middle of March.    Yeah, I don't  
2    want to preclude you from seeking some discovery, and I don't  
3    want to preclude the Government from raising any issue they  
4    feel that they might have concerning the breadth or the area  
5    of discovery at this point, but I just don't see that I have a  
6    fact issue that I need to commit myself to at this point for  
7    an evidentiary hearing.

8                      MR. MICHAEL:    Well, of course, we will pursue  
9    discovery, and we also have to address the reconsideration of  
10   Judge Rankin's order, but will this Court -- and we will do  
11   that discovery without delay.    And if the Court is disinclined  
12   to set an evidentiary hearing, which is how I interpret the  
13   Court's comments, will the Court allow us to, after we  
14   complete discovery, file a supplemental or reply brief  
15   following that discovery?

16                      THE COURT:    Well, I -- I don't know.    I assume that  
17   you're -- here's what I see happening by your request.    Within  
18   the next five days or so I'll be getting a motion to  
19   reconsider pursuant to our Local Rule 71.1 on the Government's  
20   discovery from the Claimant in this matter.    So far as I'm  
21   concerned, this case presently, if there is going to be no  
22   discovery, is ripe for a hearing -- I mean, ripe for a brief  
23   filing and an oral argument.    If it's necessary to file a  
24   brief and have an oral argument, I'm pleased to give you those  
25   times and dates.    However, what I'm hearing from you is that

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1     you wish to use your opportunity to conduct some discovery on  
2     the part of the Claimant, which the Government may --

3                      MR. MICHAEL:    Correct.

4                      THE COURT:    -- or may not object to.    So I think we  
5     need to let you do that at this point.    And once discovery  
6     winds up, you need time to brief this issue and submit it to  
7     the Court with anything that you wish to attach.    And if I  
8     feel I need a hearing based upon what you have submitted, I  
9     can order it, but I know that the Tenth Circuit has  
10    approved -- has upheld search warrants on 58 percent accuracy  
11    on animals.    And would further say with regard to the empty  
12    aircraft I don't know how you get around the fact that three  
13    heavy bags were removed from that Cessna aircraft and hauled  
14    off to a hotel.    It was unloaded.

15                    MR. MICHAEL:    You mean three empty bags with no  
16    contraband.

17                    THE COURT:    Well, I don't know what they were.

18                    MR. MICHAEL:    Well --

19                    THE COURT:    One was --

20                    MR. MICHAEL:    -- that's the reality.

21                    I would like to make one comment about all that.    And  
22    I appreciate the Court's comments about whatever my skill  
23    level is or may be.    I think that Eric Heimann and Mr. Martin  
24    have pretty much the same skill level when it comes to dealing  
25    with these complex issues on forfeiture cases.    But I made an



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1 earlier comment about dogs and the probative value, and I  
2 believe -- I'm not too sure about the case that you cited, and  
3 I'll talk to Mr. Bustos about what the Court was referring  
4 to --

5 THE COURT: They're in, they're in -- they're in  
6 Mr. Heimann's reply brief.

7 MR. MICHAEL: Ah, they were the ones in the reply  
8 brief, okay, or their opposition brief?

9 THE COURT: Yeah, correct.

10 MR. MICHAEL: Okay, I'll look at those cases. But I  
11 will say that I've stepped into many circuit courts for oral  
12 argument on these issues, and some of the cases that get cited  
13 by the courts, the issue of a dog, a dog's training and the  
14 dog's performance, have sometimes not really been fully  
15 litigated or fully briefed or are cases where the defense has  
16 not, either through inadvertence or a lack of skill or a lack  
17 of thoroughness, not really dealt with those issues in a  
18 thorough way. And sometimes the courts make these decisions  
19 based on a bare-bones showing by the Government.

20 The issue of a dog alert is a very, very important  
21 issue before the courts these days, and I really like, in any  
22 case that I have, to have an opportunity to fully explore it  
23 so that what this Court is determining is based on the  
24 temporary state of the law in a fully disputed environment  
25 where the Court is fully informed by both sides.

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1           And I'll look at those two cases to see what happened  
2     in those cases, but the recitation about a dog being  
3     some percent accurate in some training or certification  
4     process is to me just the tip of the iceberg about the issue  
5     of dogs and what value they have or what probative value they  
6     have in establishing probable cause.

7           THE COURT: Well, I recognize --

8           MR. MICHAEL: So thank you for the opportunity, Your  
9     Honor, though, to do that, to conduct the discovery that we  
10    want to conduct and then ask this Court for some  
11    supplemental -- in some supplemental brief ask this Court,  
12    based on that, to conduct an evidentiary hearing. We will do  
13    that.

14          THE COURT: Very well. I recognize all you've said  
15    because there are lots of dog cases. You know, your *Harris*  
16    *versus Florida* that you rely upon pretty heavy or *Florida*  
17    *versus* -- the Florida case, you know, was not a warrant case  
18    and was postured quite differently than what we're seeing in  
19    this case. And, of course, we have to remember that every  
20    presumption goes in favor of the work of the magistrate in  
21    this case and his determination of probable cause. Unless  
22    there are facts or circumstances that would seriously impeach  
23    that search warrant, then suppression shouldn't be granted,  
24    would be my --

25          MR. MICHAEL: Well, I appreciate that. We are also

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1     relying on *U.S. versus Jones*. And I'll tell you from the view  
2     from defense counsel, we're always fighting an uphill battle.  
3     That's how we always see it. And luckily the Court has given  
4     us some options. Even though there's a magistrate that issued  
5     the search warrant, we still have our options to challenge  
6     that. But you're right, Your Honor, it's definitely an uphill  
7     battle. I'm comfortable with that.

8                      THE COURT: As a defense attorney, you're doing God's  
9     work, and I respect it in every way.

10                     MR. MICHAEL: Well, I'm going to quote that.

11                     THE COURT: Feel free.

12                     MR. MICHAEL: Thank you, Your Honor.

13                     THE COURT: Anything further, Mr. Heimann?

14                     MR. HEIMANN: No, Your Honor. Thank you.

15                     THE COURT: Mr. Bustos?

16                     MR. BUSTOS: No, Your Honor. Thank you.

17                     THE COURT: Mr. Michael?

18                     MR. MICHAEL: No, nothing further, Your Honor.

19                     THE COURT: Thank you for calling in. We will stand  
20     in recess then.

21                     MR. MARTIN: Thanks, Judge.

22                     (Proceedings concluded 3:10 p.m.,  
23                     December 18, 2015.)  
24  
25

C E R T I F I C A T E

I, JULIE H. THOMAS, Official Court Reporter for the United States District Court for the District of Colorado, a Registered Merit Reporter and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein on the aforementioned subject on the date herein set forth, and that the foregoing pages constitute a full, true and correct transcript.

Dated this 1st day of September, 2016.

/s/ Julie H. Thomas

JULIE H. THOMAS  
Official Court Reporter  
Registered Merit Reporter  
Certified Realtime Reporter  
CA CSR No. 9162

**Exhibit 4**

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF WYOMING

3 UNITED STATES OF AMERICA, DOCKET NO. 14-CV-151-J

4 Plaintiff, Cheyenne, Wyoming  
5 August 10, 2016  
6 vs. 10:08 a.m.

7 ONE CESSNA AIRPLANE, MODEL  
8 NUMBER TU-206 BEARING TAIL  
9 NUMBER N6214V AND SERIAL  
10 NUMBER U206-1189; \$259,717 US  
CURRENCY,

11 Defendants.

12 TRANSCRIPT OF HEARING PROCEEDINGS  
13 STATUS CONFERENCE  
14 BEFORE THE HONORABLE ALAN B. JOHNSON  
15 UNITED STATES DISTRICT JUDGE

16 APPEARANCES:

17 For the Plaintiff: C. LEVI MARTIN (By Teleconference)  
18 ERIC J. HEIMANN  
19 Assistant United States Attorneys  
20 DISTRICT OF WYOMING  
21 2120 Capitol Avenue, Room 400  
22 P.O. Box 668  
23 Cheyenne, WY 82003-0668

24 For the Defendants: DAVID M. MICHAEL  
LAW OFFICES OF DAVID MICHAEL  
One Sansome Street, Suite 3500  
San Francisco, CA 94104  
(By Teleconference)

25 Court Reporter: Janet Davis  
Registered Diplomate Reporter  
Federal Certified Realtime Reporter  
Federal Official Court Reporter  
2120 Capitol Avenue, Room 2226  
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Proceedings recorded by digital stenography; transcript  
produced with computer-aided transcription.

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1 (Proceedings commenced 10:08 a.m., August 10, 2016.)

2 (Proceedings in chambers in the presence of the Court and

3 Mr. Heimann; counsel participating by teleconference: David

4 Michael, Levi Martin.)

5 MR. MICHAEL: Good morning, Your Honor. This is David

6 Michael. Your Honor, I am at an airport right now, so I'm

7 going to apologize. You know how those PA systems are in

8 airports when they come on, and I apologize if that interferes

9 with the status in any way.

10 THE COURT: Thank you, Mr. Michael. It is good to

11 hear your voice again.

12 MR. MICHAEL: It has been awhile.

13 THE COURT: It has been. I have present in chambers

14 with me Eric Heimann from the office of the United States

15 Attorney, Assistant United States Attorney.

16 And, Levi Martin, are you on the telephone as well?

17 MR. MARTIN: I am. Good morning, Judge.

18 THE COURT: Good morning. Are you located upstairs?

19 MR. MICHAEL: No, he's on the conference call with me.

20 I called in first, Your Honor.

21 MR. MARTIN: I'm in Salt Lake.

22 THE COURT: Salt Lake.

23 The matter that brings us together this morning is an

24 issue of initial -- creating an initial pretrial order so that

25 this case can go forward. The case is captioned United States

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1 of America, Plaintiff, against One Cessna Airplane and \$259,717  
2 of United States Currency. The property claimant is Scott  
3 Michael Lewis, and this is under Docket 14-CV-00151, so it has  
4 been pending for a lengthy period of time.

5 The first question that I have really deals with the  
6 caption of the case and that is whether or not that caption  
7 should be amended given Mr. Lewis' relinquishment of any  
8 interest in the Cessna aircraft in this matter, to eliminate it  
9 from the caption.

10 MR. HEIMANN: Your Honor, we do intend to complete the  
11 forfeiture of the airplane through the criminal case where  
12 Mr. Lewis was convicted and Your Honor included forfeiture of  
13 that plane as part of his sentence. Procedurally, we need to  
14 make some filings in the criminal case to get that done and  
15 then would likely move to dismiss that property from this  
16 matter. Whether we change the caption now or when we make that  
17 filing does not matter to me, but we do need to get a couple  
18 things filed in the criminal case and get some orders in that  
19 case before we would move to dismiss it here.

20 But we do intend to do that, so our focus should be on  
21 the money.

22 THE COURT: Excellent. And given the schedule that we  
23 have, it seems to me that can all occur within due course at  
24 appropriate times.

25 MR. HEIMANN: And, Your Honor, I expect we would get  
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1 that taken care of within the next -- our filings within the  
2 next couple weeks in the criminal case, certainly, and in this  
3 case within a week or two after the criminal -- an order is  
4 issued in the criminal case.

5 THE COURT: Very well.

6 Any comment, Mr. Michael?

7 MR. MICHAEL: Yeah, I completely concur with  
8 Mr. Heimann. It should be removed from the case. It is no  
9 longer property subject to forfeiture. It is a civil matter.

10 THE COURT: Certainly we want to avoid any possible  
11 juror confusion by having it remain within the caption of the  
12 case.

13 MR. MICHAEL: You are looking way downstream, Your  
14 Honor.

15 THE COURT: Correct.

16 The second matter is a pending matter, and just to  
17 help everyone move forward in this case, I want to announce my  
18 intention at this point to find that there's both procedural  
19 and constitutional standing that has been properly alleged and  
20 brought before the Court by the claimant, Mr. Lewis, in this  
21 case. And I believe what that will implicate will be a  
22 granting of the motion to reconsider the Magistrate's ruling in  
23 this matter and a finding on the part of the Court that there  
24 has been an error of law of significance that has been made in  
25 this case.

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1       Our opinion will take into consideration Tenth Circuit  
2 pronouncements that have been made that were not discussed in  
3 the hearing before the Magistrate in this case. And you can  
4 expect to see an order on this matter shortly, and thus --  
5 thus, the objections to further answering the interrogatories  
6 that were posed would be sustained.

7       MR. MICHAEL: Your Honor, are you saying that the  
8 cases you are going to consider are the ones that were in the  
9 briefs that were filed in regards to that reconsideration?

10       THE COURT: Well, there may be one that was not, but  
11 you will -- you will see it.

12       MR. HEIMANN: Judge, for my understanding, is the  
13 order reversing the compulsion order based on the fact these  
14 are Rule (g)(6) special interrogatories or based on the  
15 substance of the interrogatories and request for documents?

16       THE COURT: Well, the Magistrate explicitly indicated  
17 he was not ruling with regard to the matter of (g)(6) standing.  
18 However, as a practical matter, it appears to the Court that he  
19 did rule with regard to that issue and indicate that there was  
20 not (g)(6) standing.

21       MR. HEIMANN: Okay. Thank you.

22       THE COURT: All right. The parties are aware of their  
23 power to -- the only other thing I would say about what I've  
24 just discussed is the issue in this matter seems to create a  
25 constitutional confrontation and choice on the part of the

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1 claimant.

2 MR. MICHAEL: I assume you're talking about Article  
3 III standing.

4 THE COURT: Correct.

5 MR. MICHAEL: Was that briefed, though, in the -- in  
6 the objections?

7 THE COURT: No, it was not.

8 MR. MICHAEL: Does the Court want us to brief that  
9 issue? Article III standing has been litigated in a lot of  
10 circuits.

11 THE COURT: Yes, it has, and I think I'll resolve that  
12 issue for you.

13 The consent to trial, you can consent to try this case  
14 before Magistrate Judge Rankin, if that is your choice, by  
15 filing the consents with him. And those consent forms, I  
16 think, should have been distributed to the parties. If they  
17 have not, they can be secured through the clerk's office.

18 We would like -- well, let me ask either Mr. Heimann  
19 or Mr. Martin whether or not the Government anticipates calling  
20 any expert witness in this case.

21 MR. HEIMANN: Your Honor, in January of this year we  
22 filed an expert designation based on the pretrial order as it  
23 stood at that time and about one week before the case was  
24 stayed on January 27th, so we have filed our expert designation  
25 regarding a single expert.

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1 THE COURT: All right. And you don't anticipate  
2 changing that?

3 MR. HEIMANN: We don't.

4 MR. MARTIN: We might.

5 MR. HEIMANN: Well, we might. We haven't really  
6 thought about it, Your Honor.

7 MR. MARTIN: Eric, we need to probably get in contact  
8 with him again because we haven't since January, don't you  
9 think?

10 MR. HEIMANN: I agree. So I had the benefit of the  
11 draft initial pretrial that was handed out by the Court and it  
12 does have September 19th as an expert witness deadline for the  
13 Government. Your Honor, I think it is worthwhile for us to  
14 recontact our expert. It has been several months. And if we  
15 have some additional time to redesignate or designate a new  
16 one, if necessary, we would like that.

17 THE COURT: Very well.

18 MR. MICHAEL: Your Honor, may I interject something  
19 before we get into the issues of trial? There's also pending  
20 before this Court a motion to suppress. And the motion to  
21 suppress has been filed, the opposition has been filed, but we  
22 still have not filed a reply. I believe that this case was  
23 stayed at some point in time.

24 And I'd like to discuss the proceedings on the motion  
25 to suppress. I think it is an evidentiary hearing that we have

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1 a right to. And we'd also like to, now that the stay is no  
2 longer required, file our reply in support of that motion to  
3 suppress and ask the Court to set that for an evidentiary  
4 hearing.

5 I think the motion was filed on November the 2nd and  
6 the opposition was filed November the 16th.

7 MR. HEIMANN: Your Honor --

8 THE COURT: Is the motion ripe?

9 MR. MICHAEL: Motion to suppress evidence.

10 THE COURT: Is it ripe?

11 MR. MICHAEL: Excuse me, Your Honor?

12 THE COURT: Well, we had postponed ruling on that  
13 motion.

14 MR. MICHAEL: I didn't follow what you said, Your  
15 Honor.

16 MR. HEIMANN: Your Honor, if I may, we do need to  
17 schedule whatever litigation is necessary to decide that  
18 motion. We did have a status conference regarding it in  
19 December or January, is my memory, prior to the stay, and the  
20 question was whether there were factual allegations requiring  
21 an evidentiary hearing or not. And my memory is we have left  
22 it at discovery requests regarding the dog needed to be done  
23 and the claimant needed to supplement his motion to create an  
24 issue of -- disputed issue of fact regarding either the dog or  
25 the search warrant.

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1 We do need some schedule on that. We had -- and more  
2 in general, we have a number of discovery requests that were  
3 submitted -- that were served by the Government, served by the  
4 defendant. They had deadlines at the time of our stay, some of  
5 which had passed, some of which hadn't, so we also need to talk  
6 about the discovery deadlines for discovery requests that had  
7 already been served at the time of the stay.

8 THE COURT: All right. So --

9 MR. MICHAEL: And I believe our position on the  
10 suppression issue, Your Honor, is that in these kind of unique  
11 forfeiture proceedings that we have a right to have a hearing  
12 on the suppression motion prior to further litigation in the  
13 case.

14 THE COURT: Well, we've got to get this case moving.  
15 If you want to just delay it further --

16 MR. MICHAEL: No, I want to have a hearing.

17 THE COURT: -- I'm not going to tolerate it. So let's  
18 proceed with this scheduling conference and we will see how we  
19 end up.

20 I note that the claimant had filed a motion to  
21 suppress in which he argued that the dog that was involved in  
22 the sniff was not properly certified. I orally denied the  
23 motion in a status conference and held that there need not be  
24 an evidentiary hearing at this time, the main rationale being  
25 that the claimant was just guessing about the dog's credentials

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1 and had not served any discovery requesting information on the  
2 dog.

3 I anticipate that the Government [sic] will serve  
4 discovery on the Government about the dog and then refile its  
5 motion.

6 MR. HEIMANN: Your Honor, that is my memory of our  
7 hearing. I guess I didn't realize that you had actually orally  
8 denied it. I know you had mentioned that you believed it  
9 wasn't going to be granted, but I'm glad that we have a note  
10 that says it was, in fact, denied.

11 THE COURT: The expert witness for the defendant would  
12 follow one month later, approximately October 24th, 2016; would  
13 anticipate fact discovery, including expert witnesses'  
14 depositions, winding up on November 14, 2016; with dispositive  
15 motions and any further motion to suppress evidence based upon  
16 dog sniff or whatever that is derived from that discovery that  
17 is conducted in this case to be filed on or before December  
18 7th, 2016, with responses on December 21st, 2016 and replies on  
19 or before December 28th, 2016.

20 If you wish, I can set a hearing date between  
21 completion of fact discovery and the dispositive motions should  
22 that be necessary with regard to any suppression motion that is  
23 filed.

24 MR. MICHAEL: Is the Court saying that, if the parties  
25 wish, you could set a hearing on that particular motion to

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1 suppress between the completion of fact discovery and the  
2 dispositive motion date of December 7th?

3 THE COURT: Yes, hopefully giving you time to do  
4 whatever you need to do in that regard.

5 MR. MICHAEL: Much appreciated, Your Honor. Yeah, I  
6 can discuss that with the Government, and we may come up with  
7 an earlier date for that hearing.

8 MR. HEIMANN: Your Honor, just so I'm clear, does --  
9 does the Court consider the current -- the suppression motion  
10 that was filed in November of last year to be pending or do you  
11 consider it to be decided and that an additional motion needs  
12 to be filed to go -- to bring it before the Court again?

13 THE COURT: I think it was decided and denied because  
14 there was not any information or support for it.

15 MR. HEIMANN: Thank you, Your Honor. That's what I  
16 heard you say, and I just wanted to be clear about that.

17 MR. MICHAEL: Oh, the motion to suppress was initially  
18 denied, Your Honor?

19 THE COURT: Yes.

20 MR. MICHAEL: Oh, I thought we had -- and the Court is  
21 indicating that we can renew that motion with a request for an  
22 evidentiary hearing?

23 THE COURT: Absolutely.

24 MR. MICHAEL: If we -- okay. Thank you, Your Honor.

25 THE COURT: We're just trying to organize and get this



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1 case moving in some sort of orderly fashion because I know how  
2 busy your schedule is.

3 MR. MICHAEL: Were you talking to Mr. Heimann or were  
4 you talking to me?

5 THE COURT: I'm talking to you because you're all over  
6 the country, as witnessed by you waiting for your Delta flight  
7 at the San Francisco Airport.

8 MR. MICHAEL: Yes, as it happens, I guess my practice  
9 takes me pretty much all over the country, not just provincial.

10 THE COURT: I understand.

11 December 21 for any responses to dispositive motions;  
12 December 28th, replies to dispositive motions. If there are  
13 any motion to strike expert or experts in this matter, they  
14 should be filed under the same schedule: December 7, December  
15 21 and replies on the 28th.

16 We would look for a Joint Final Pretrial Memorandum on  
17 January 6th, 2017, and on that date any motions in limine would  
18 be filed, with responses on the 20th of January, replies on the  
19 27th and our Final Pretrial Conference would be February 22nd,  
20 2017. So if we had a hearing on your suppression motion at an  
21 earlier time, the Court would have plenty of time to rule with  
22 regard to that motion.

23 We would look for a jury trial --

24 MR. MICHAEL: All right, Your Honor.

25 THE COURT: I'm sorry.

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1 Our jury trial would be set on March 6th, 2017,

2 commencing at 1:30.

3 On February 20th we would like to get your voir dire,

4 if we're that -- if we're going to go to trial, jury

5 instructions and any special verdict forms. And at the same

6 date you would file your evidence with the JERS -- for the JERS

7 system in this matter.

8 The parties at any time can engage in ADR if they feel

9 that is appropriate. Both magistrates provide mediation

10 services here at no cost to the parties, but that you can

11 certainly reach out to many people in the area who do that same

12 service. And I'm sure that Mr. Heimann could furnish

13 Mr. Michael a list of outside persons who do ADR.

14 MR. MICHAEL: And the magistrate judges are available

15 for that also, Your Honor?

16 THE COURT: They are indeed.

17 MR. MICHAEL: Okay. I can discuss that with

18 Mr. Heimann.

19 THE COURT: And Magistrate Judge Carman, who is

20 located in Mammoth, Yellowstone Park, after the busy season of

21 Yellowstone is completed, which would be the end of summer and

22 the first snowfall, is portable in that he is -- has a Cessna

23 aircraft that he can travel in.

24 And Magistrate Rankin, for that matter, is learning to

25 fly and owns his own airplane.

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1 MR. MICHAEL: He have a Cessna also?

2 THE COURT: Cessna 172.

3 MR. HEIMANN: Your Honor, I do -- we do need to  
4 talk -- and I don't know if this is something we should address  
5 with the magistrate judge or if we can address it with you now:  
6 There were Rule 33 and Rule 34 discovery requests made by the  
7 Government on -- we sent them via e-mail on December 22nd of  
8 2015. I'm not sure exactly when they arrived by certified mail  
9 with Mr. Michael.

10 No responses were received to those prior --

11 THE COURT: The case had been stayed, I think.

12 MR. HEIMANN: Well, Your Honor, actually I think the  
13 deadline probably passed before the stay was issued on January  
14 27th. Regardless, I would request a deadline for the  
15 defendant -- or the claimant to respond to those requests.

16 Also, we received discovery requests from the  
17 claimant. They were sent by Fed-X and e-mail on January 8th  
18 and I expect we received them in our office the Monday after.  
19 We had time remaining when the case was stayed on our response  
20 deadline. But we -- they deserve a deadline for that as well.

21 And finally, we had served additional -- well, no,  
22 that's not true.

23 Those are the two that are out there in terms of  
24 discovery requests that were pending or overdue at the time of  
25 the stay, and I would request that the Court set a deadline for

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1 defendant to respond to the Government's responses which were  
2 due in mid-January and a deadline for the Government after that  
3 date to respond to the -- his requests that had been pending.  
4 And I don't have a strong opinion about whether it should be 15  
5 days and 30 days or how you want to do that, but I think a  
6 solid deadline is important for those requests.

7 THE COURT: I take it from your response and your  
8 statement that you're ready to respond?

9 MR. HEIMANN: Your Honor, I know Mr. Martin and I were  
10 working on our responses when the case was stayed. We will  
11 also -- and we were -- would have, I believe, reached out to  
12 the claimants and Mr. Michael to say where was his response if  
13 we hadn't known about the Indictment being returned against the  
14 claimant in January and expected the stay to come.

15 But technically, they were overdue before -- before  
16 the stay was actually issued.

17 THE COURT: All right. Well, Mr. Michael, it seems  
18 reasonable that there be a -- at least to start the discovery  
19 process. How is your schedule looking to get that -- those  
20 submissions?

21 MR. MICHAEL: I think 45 days out would be reasonable,  
22 Your Honor, although we may -- I don't want to concede anything  
23 here. We may -- when we renew the motion to suppress, we may  
24 at that time ask the Court to stay discovery pending  
25 resolution, and we will cite some authority for that. But I

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1 think it is appropriate for now if the Court would set that out  
2 45 days for discovery compliance and both parties can work on  
3 that. 45 to 60 days is fine with us.

4 THE COURT: Why so long?

5 MR. MICHAEL: 45 days is fine. Well, I actually  
6 haven't reviewed the Rule 33 and 34 discovery that was  
7 requested yet, so that's why.

8 MR. HEIMANN: Your Honor, the proposed Initial  
9 Pretrial Order has fact discovery ending on November 14th, and  
10 45 to 60 days is going to put us hard on that deadline for  
11 discovery that -- for what's already been issued, not including  
12 what we expect will be reissued because the special  
13 interrogatories are going to be reserved under Rule 33 and 34.

14 So I think -- I also expect there's going to be some  
15 conflict regarding discovery because I don't think there's  
16 going to be adequate answers made, and we're going to be back  
17 before the Magistrate or Your Honor on those issues. We need  
18 deadlines that are going to make sense with November 14, or  
19 we're just going to be back here redoing this schedule.

20 THE COURT: Very well. I think from what you have  
21 indicated you will be able to have your discovery here by  
22 September 1st and responses by the defendant on or before  
23 September 15 -- September 19.

24 MR. HEIMANN: I'm sorry, Your Honor?

25 THE COURT: September 19.

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1 MR. HEIMANN: So his deadline to respond to the  
2 discovery we've already given him is after our deadline?

3 THE COURT: Yes.

4 MR. HEIMANN: Even though we served our discovery  
5 first and he was overdue at the time of the stay and had  
6 additional time to respond?

7 THE COURT: Yes. You're the all-powerful government.

8 MR. HEIMANN: Respectfully, Your Honor, I would  
9 request that at a minimum the response dates for the  
10 already-issued served discovery be the same. There's no reason  
11 the defendant should get extra time when we served ours first  
12 and he was late at the time of the stay and we had additional  
13 time.

14 THE COURT: Okay. I'm not going to argue with you.  
15 Sorry.

16 MR. HEIMANN: Understood, Your Honor.

17 THE COURT: Next issue.

18 MR. MICHAEL: That's all the issues I have, Your  
19 Honor.

20 MR. HEIMANN: Your Honor, I think that's everything.  
21 I don't have anything else other than what we have discussed.

22 THE COURT: There is certainly nothing that precludes  
23 any of the parties from filing their dispositive motions at any  
24 time prior to the deadlines that we have given you, and the  
25 Court would be happy to consider them and give them an early

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1 setting should that occur.

2 MR. MICHAEL: Thank you, Your Honor.

3 THE COURT: Mr. Michael, have you -- I'm sure you  
4 have -- utilized the federal JERS system.

5 MR. MICHAEL: The federal juror system?

6 THE COURT: It's an evidence display system.

7 MR. MICHAEL: I have not, Your Honor.

8 THE COURT: If you need any training on that, if we  
9 get to the point where trial is approaching, you may contact  
10 the clerk's office and they will give you that training. There  
11 will be some explanation in the Initial Pretrial Order that the  
12 Court is giving you.

13 COURTROOM DEPUTY: There is also --

14 MR. MICHAEL: I will do that. Writing that down now.

15 COURTROOM DEPUTY: Mr. Michael, there's also an  
16 instruction form on our website as well that kind of goes more  
17 into details of labeling exhibits and things like that for you  
18 as well.

19 MR. MICHAEL: Great, great. I am writing that down  
20 also. Thank you, Your Honor. I appreciate the reference to  
21 that.

22 THE COURT: All right. Well, I can't think of  
23 anything else.

24 MR. MICHAEL: I believe we've covered everything.

25 Nice to be back on track.

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1 THE COURT: Well, we'll see.

2 MR. MICHAEL: I think.

3 THE COURT: I have a feeling that there's many  
4 complications ahead.

5 MR. MICHAEL: I'm sure that feeling comes from many  
6 years of experience.

7 THE COURT: No, you're the expert in this area. You  
8 try these all the time.

9 MR. MICHAEL: I do. Interesting area of law, that's  
10 for sure.

11 THE COURT: You bet. Well, look forward to hearing  
12 from you soon.

13 MR. MICHAEL: Thank you, Your Honor. Appreciate it.  
14 Look forward to seeing you soon.

15 THE COURT: You bet. We'll stand in recess.

16 MR. MARTIN: Bye, Judge.

17 THE COURT: Thank you, Levi.

18 (Proceedings concluded 11:01 a.m., August 10, 2016.)

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1                   C E R T I F I C A T E

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5           I, JANET DAVIS, Federal Official Court Reporter for  
6 the United States District Court for the District of Wyoming, a  
7 Registered Diplomat Reporter and Federal Certified Realtime  
8 Reporter, do hereby certify that I reported by machine  
9 shorthand the foregoing proceedings contained herein on the  
10 aforementioned subject on the date herein set forth, and that  
11 the foregoing pages constitute a full, true and correct  
12 transcript.

13

14           Dated this ^ day of September, 2016.

15

16

17

18                   /s/ Janet Davis

19

20                   JANET DAVIS  
21                   Registered Diplomat Reporter  
22                   Federal Certified Realtime Reporter  
23                   United States Court Reporter

24

25

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that, on 7 September 2016, I caused to be electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/David M. Michael

DAVID M. MICHAEL